

EXHIBIT A
Scope of Work

PURPOSE

The purpose of this Agreement is to fund research, development and demonstration projects under the Energy Commission Public Interest Energy Research (PIER) Program. The contract will «description».

TASK 1

TITLE

Task Description....

Deliverables:

EXHIBIT B

Budget Detail and Payment Provisions

NOTE: RFP ATTACHMENT 9, EXHIBIT B PROGRAM BUDGET FORMS WILL BE INSERTED AT THE BACK OF THIS EXHIBIT

The following clauses may or may not be included, Contract Officer (CO) to decide when developing this Exhibit for each agreement.

1. **INVOICING PROCEDURES:** For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates specified herein, which is attached hereto and made a part of this Agreement.

Invoices shall include the Agreement Number and shall be submitted in duplicate not more frequently than monthly in arrears to:

California Energy Commission
Accounting Office, MS-2
1516 9th Street, First Floor
Sacramento, California 95814

2. **BUDGET CONTINGENCY CLAUSE:** It is mutually agreed that if the Governor or legislature, in the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the work identified in Exhibit A, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Governor or legislature for purposes of this program, the State shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Agreement Amendment to Contractor to reflect the reduced amount.

3. **TRAVEL AND PER DIEM RATES:** Contractor shall be reimbursed for travel and per diem expenses using the same rates provided to nonrepresented state employees. The Contractor must pay for travel in excess of these rates. Contractor may obtain current rates from the Commission Contract Officer.

- A. Travel identified in Exhibit B, Budget is approved and does not require further authorization.
- B. Travel that is not included in Exhibit B, Budget shall require prior written authorization from the Commission Contract Manager. Commission will reimburse travel expenses from the Contractor's office location
- C. Contractor must retain documentation of travel expenses in its financial records as follows:
 - listed by trip including dates and times of departure and return, and
 - receipts for travel expenses claimed must be retained by Contractor (receipts are not required for travel meals or incidentals within current allowable rates).

4. **RETENTION:** Commission shall retain from each invoice an amount equal to 10 per cent (10%) of that invoice, excluding equipment invoices. The retained amount shall be held by the Commission

and released to Contractor only upon the Commission's approval that the contract work has been satisfactorily completed and the Final Report has been received and approved. Contractor must submit an invoice for the retained amount.

Retention may be released upon completion of tasks that are considered separate and distinct, i.e., the task is a stand alone piece of work and could be done without the other tasks. Tasks for administration or management of the contract and/or subcontractors are not considered separate and distinct tasks. Therefore, retention on those tasks will not be released until the termination of the contract. For all other tasks, the Commission Contract Manager shall specify and notify the Contractor Project Director in writing which tasks can be paid in full upon their completion. The procedure for releasing retention upon task completion is as follows:

- 1) Contractor must submit all deliverables required by the task and an invoice requesting payment in full for the task.
- 2) The work must be satisfactorily completed and deliverables approved by the Commission Contract Manager.

(CO confirm, if no retention is to be held, state so in this clause, also, identify what task(s) retention can be released when the task is complete.)

5. PAYMENT TERMS: *(CO Choose)*

- ☐ Monthly Flat Rate ☐ Quarterly Flat Rate ☐ One –Time Payment
☐ Itemized Monthly or Quarterly Invoice
☐ Advance Payment Not to Exceed \$ _____ or _____ % of Contract Amount
☐ Reimbursement/Revenue
☐ Other (Explain) (i.e. lump sum/deliverable)

6. CONDITIONS:

- A. No payment shall be made in advance of services rendered. *(CO confirm/advance payment language goes here)*
- B. A request for payment shall consist of, but is not limited to:
- 1) An invoice that is a **list** of actual expenses incurred during the billing period. Backup information is not required, see Audit clauses. The invoice list must include:
 - a) date prepared, contract number, contractor's Federal ID number and billing period,
 - b) contractor's actual hourly labor rates by individual, which may be fully loaded,
 - c) operating expenses, including equipment, travel, miscellaneous,
 - d) subcontractor invoices, identifying small business and disabled veteran business,
 - e) overheads, direct & indirect, not included in the fully loaded hourly rate,
 - f) match fund expenditures, and

- g) by task: cumulative amounts, budgeted, billed to date, current billing, and balance of funds.
- 2) A progress report that documents evidence of progress and deliverables as detailed in Exhibit A.
- C. The Commission will accept computer-generated or electronically transmitted invoices without backup documentation provided that Contractor sends a hardcopy the same day to the address in Clause 1 of this Exhibit.
- D. The Commission Contract Manager may approve invoices requesting partial payment of a task if the Contractor has demonstrated sufficient evidence of progress toward preparing the deliverables required in that task. The Commission Contract Manager will dispute an invoice requesting payment of all funds remaining in that task budget if the Commission Contract Manager has not received and approved all of the deliverables due for that task.
- E. This Agreement is funded through the Public Interest Energy Research (PIER) Program. Contractor may be providing matching funds identified in Contractor's proposal and as detailed in Exhibit B, Budget. Match sources may be revised subject to the requirements of Exhibit A.
- F. Payments shall be made to Contractor for undisputed invoices. An undisputed invoice is an invoice submitted by the Contractor for services rendered and for which additional evidence is not required to determine its validity. Contractor will be notified via a Dispute Notification Form, within 15 working days of receipt of an invoice, if the State disputes the submitted invoice.
- G. Payment will be made in accordance with, and within the time specified, in Government Code Chapter 4.5, commencing with Section 927. Payment shall be made to Contractor no later than 30 calendar days from the date a correct, undisputed invoice is received in the Commission Accounting Office. The State shall make payment to the Contractor for performance under this contract, in accordance with applicable deliverable criteria, receipt and approval by the Commission, and in accordance with invoices submitted.
- H. Final invoice must be received by the Commission no later than 60 calendar days after the Agreement termination date.
- I. The State will pay for State or local sales or use taxes on the services rendered or equipment, parts or software supplied to the Commission pursuant to this Agreement. The State of California is exempt from Federal excise taxes.
- J. Budget reallocations that do not significantly affect the scope of work will be made in the following manner. Contractor shall provide reasonable advance notification to the Commission Contract Manager of any anticipated budget reallocations. Contractor may reallocate a task budget up to 15 percent of the original task amount, with prior written notification to the Contract Manager. Reallocations of more than 15 percent of an original task budget require prior written approval of the Commission Contract Manager and the Program Team Lead. Commission Contract Manager will notify the Contractor Project Manager in writing within 10 working days. The Commission Contract Manager shall send approved changes in a revised Exhibit B, Budget to the Commission Contracts Officer.

7. RECORDKEEPING, COST ACCOUNTING AND AUDITING

A. Cost Accounting

Contractor agrees to keep separate, complete, and correct accounting of the costs involved in developing, installing, constructing, and testing of Project-Related Product(s) funded under the Commission-funded portion of this contract as well as keep separate, complete, and correct account of the Economic Benefit(s) from Project-Related Product(s) and Right(s).

B. Accounting Procedures

The Contractor's costs shall be determined on the basis of the Contractor's accounting system procedures and practices employed as of the effective date of this contract. The Contractor's cost accounting practices used in accumulating and reporting costs during the performance of this contract shall be consistent with the practices used in estimating costs for any proposal to which this contract relates; provided that such practices are consistent with the other terms of this contract and provided, further, that such costs may be accumulated and reported in greater detail during performance of this contract. The Contractor's accounting system shall distinguish between direct costs and indirect costs. All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to costs incurred under this contract.

C. Allowability of Costs

1) Allowable Costs

The costs for which the Contractor shall be reimbursed under this contract include all costs, direct and indirect, incurred in the performance of work that are identified in the Contractor's proposal, if applicable, and Exhibit B, Budget. Costs must be incurred within the term of the Agreement. Factors to be considered in determining whether an individual item of cost is allowable include: (i) reasonableness of the item, (ii) allocability of the item to the work, (iii) the appropriate use of applicable Federal OMB Circulars A-87, A-21, A-122 or FAR Part 31, and (iv) the other terms and conditions of this Agreement.

2) Unallowable Costs

The following is a description of some specific items of cost that are unallowable; provided, however, that the fact that a particular item of cost is not included shall not mean that it is allowable. These items include Contingency Costs, Imputed Costs, Fines and Penalties, Losses on Contracts, and Excess Profit Taxes.

3) Except as provided for in this Agreement, Contractor shall use the applicable Federal OMB Circulars A-87, A-21, A-122 or FAR Part 31 in determining allowable and unallowable costs.

D. Audit Rights

Contractor shall maintain books, records, documents, and other evidence, based on the procedures set forth above, sufficient to reflect properly all costs claimed to have been incurred in performing this contract. The Commission, an agency of the State or, at the Commission's option, a public accounting firm designated by Commission, may audit such accounting records at all reasonable times with prior notice by Commission. Commission shall bear the expense of such audits. It is the intent of the parties that such audits shall ordinarily be performed not more frequently than once every twelve (12) months during the performance of the work and once at any time within three (3) years following payment by Commission of the Contractor's final invoice. However, performance of any such interim audits by Commission does not preclude further audit.

Contractor agrees that the Commission, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of record retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this contract. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896)

E. Refund to Commission

If Commission determines that any invoiced and paid amounts exceed the actual allowable and incurred costs Contractor shall repay such amounts to Commission within thirty (30) days of request or as otherwise agreed to in writing by the Commission and Contractor. If Commission does not receive such repayments, Commission shall be entitled to withhold further payments to the Contractor.

F. Audit Cost

The cost of the audit shall be borne by the Commission except when the results of the audit reveal an error detrimental to the Commission exceeding more than ten percent (10%) or \$5,000 (whichever is greater) of 1) the amount audited, or 2) if a royalty audit, the total royalties due in the period audited. In these exceptions, Contractor agrees to reimburse Commission for reasonable costs and expenses incurred by the Commission in conducting such audit.

8. BUDGET DETAIL

Budget Detail is contained in the attachment to this Exhibit.

EXHIBIT C
General Terms and Conditions

PLEASE NOTE: This page will not be included with the final Agreement. The General Terms and Conditions will be included in the Agreement by reference to Internet site: www.dgs.ca.gov/contracts choose **Standard Language for use in Standard Agreements or if this Agreement is with another State agency, choose Interagency Agreement**. The exact terms to be used will be those appearing on the website the date the Agreement is signed by Contractor.

EXHIBIT D

SPECIAL TERMS AND CONDITIONS

1. DEFINITIONS

- A. ***Affiliate of the Contractor*** means any natural person, corporation, partnership, joint venture, sole proprietorship or other business entity directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Contractor. The term "control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by Agreement, or otherwise. For purposes of this Agreement, it is presumed that ownership or control of the voting power of more than fifty percent (50%) of the voting stock or partnership interests in an entity constitutes control of that entity.
- B. ***Agreement Budget*** refers to Commission reimbursable and Contractor's matching fund expenditures for that portion of the project covered by the Agreement.
- C. ***Agreement Period*** is the length of this Agreement between the Commission and the Contractor. The Contractor's "project" may coincide with or extend outside the "Agreement period."
- D. ***Date*** means calendar date.
- E. ***Agreement Start Date*** is the date Commission reimbursable expenses can begin after the Department of General Services signs the Agreement.
- F. ***Agreement End Date*** is the last date Commission reimbursable expenses can be incurred and is the expiration date of the Agreement.
- G. ***Economic Benefit*** for a project co-funded using Energy Commission funds means the realization of economic gain or other tangible benefits by the Contractor or its affiliates (except bona fide third party purchasers of Contractor's commercial products) through the use of project-related products and rights, including but not limited to, operation, sale, distribution or manufacturing, or by any other transaction, including but not limited to, grant, rent, loan, equity, option, transfer, license or other fee, or by otherwise disposing of the project-related products and rights. The Commission may rely upon professional accounting opinion in making a final determination of the dollar value of gross revenue, and such determination shall be the basis for calculating the royalty payment due the Commission.
- H. ***Equipment*** is defined as having a useful life of at least one year, having an acquisition unit cost of at least \$5,000, and purchased with Commission funds. ***Equipment*** means any products, objects, machinery, apparatus, implements or tools purchased, used or constructed within the project, including those products, objects, machinery, apparatus, implements or tools from which over thirty percent (30%) of the equipment is composed of materials purchased for the project. For purposes of determining depreciated value of equipment used in the Agreement, the project shall terminate at the end of the normal useful life of the equipment purchased, funded and/or developed with Commission funds. The Commission may determine the normal useful life of such equipment.

- I. **Financial Statements** means balance sheets, statements of operations, statements of cash flows, and capital statements.
- J. **Gross Revenues** means the gross sales price, rentals and other amounts received by Contractor from or on account of the sale, lease, or other transfer or use of Project-Related Products and Rights, less sales tax paid. Gross Revenues shall be determined as above and in accordance with appropriate Federal cost principles and any economic benefit.
- K. **Key Personnel** are employees or consultants of the Contractor who are critical to the outcome of the project. For example, they may have expertise in the particular field, or have experience that is not available from another source. Replacing these individuals may affect the outcome of the project.
- L. **Key Subcontractors** are contractors, subcontractors or vendors to the Contractor and who are critical to the outcome of the project. As with Key Personnel, Key Subcontractors may have expertise in the particular field, or have experience that is not available from another source and replacement may significantly affect the project. An employee of the Contractor's subcontractor or vendor may also qualify as "key".
- M. **Match Fund Participant** means any party that supplies match funds to the project. **Match Funds** means cash or in-kind (non-cash) contributions provided by Contractor, subcontractors or other parties that will be used in performance of this Agreement.
- N. **Materials** means the substances used in constructing a finished object, commodity, device, article or product.
- O. **Otherwise Disposing Of** means (1) project-related products and rights not sold but delivered by the Contractor or its affiliates to others regardless of the basis for compensation, if any, and (2) project-related products and rights put into use by the Contractor or any third party for any purpose other than testing or evaluation of the project-related products and rights.
- P. **Project** refers to the entire effort undertaken and planned by the Contractor and consisting of the work co-funded by the Commission. The project may coincide with or extend beyond the Agreement period.
- Q. **Project-Related Products and Rights** means any and all energy inventions, discoveries, machines, designs, computer software, products, devices, mechanisms, methods, protocols, processes, algorithms, flowcharts, diagrams, trade secrets, data, copyrights, patents, trademarks, proprietary rights, and the like created or made or discovered or first reduced to practice by the Contractor or other third party as a result, in whole or in part, of the Agreement award(s) and any and all updates, revisions, modification, enhancements, derivations, variations, additions, continuations, renewals, and extensions thereto and all proceeds and products therefrom.
- R. **Sale** is sale, license, lease, gift or other transfer of a project-related product or right.
- S. **Sales Price** means gross revenue, excluding normal returns and allowances such as sales tax, freight and insurance, if applicable, derived from a sale.

- T. **Subject Invention** means any and all energy invention or discovery conceived, or first actually reduced to practice in the course of or under the Commission-funded portion of this Agreement (i.e., that portion of this Agreement for which Contractor has invoiced the Commission and received reimbursement) and includes any art, method, process, machine, manufacture design or composition of matter, or any new and useful improvement hereof, whether patented or unpatented, under the patent laws of the United States of America or any foreign country.
- U. **Technology** refers to the general subject area where the product or innovation will be used. For example, solar thermal electric generation is a technology area; direct steam generation is an innovation in this technology area. **Technology Developed** means subject invention and/or project-related products and rights.
- V. **Terms Relating to Data**
- 1) **Technical Data** or **Data** as used throughout this Agreement means recorded information regardless of form or characteristic, of a scientific or technical nature and used in the performance of this Agreement. It may, for example, document research; document experimental, developmental, demonstration, or engineering work; or be usable or used to define a design or process; or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, test specifications or related performance or design type documents or computer software (including computer programs, computer software data bases, and computer software documentation). Examples of technical data include manufacturing techniques and methods, machinery, devices such as tools, products, or components, research and engineering data, engineering drawings and associated lists, specifications, engineering calculations, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data as used herein does not include financial reports, cost analyses and other information incidental to Agreement administration.
 - 2) **Business Information** is information about the operation of a specific business. It includes information concerning the cost and pricing of goods, supply sources, cost analyses, characteristics of customers, books and records of the business, sales information including mailing lists, customer lists, business opportunities, information regarding the effectiveness and performance of personnel, and information incidental to Agreement administration.
 - 3) **Public Information** is information previously published, generally available from more than one source, or information in the public domain. All air monitoring and emission data included in a proposal or requested through a contract are public information. California Government Code Section 6254.7 states that all information, analyses, plans or specifications that disclose the nature, extent, quantity, or degree of air contaminants or other pollution which any article, machine, equipment, or other contrivance will produce, which any state or local agency requires an applicant to provide before the applicant builds, erects, alters, replaces, operates, sells, rents, or uses such article, etc., are public records.
 - 4) **Confidential Information** is information Contractor has submitted to the Commission and has satisfactorily identified and which the Commission has

agreed to designate as confidential pursuant to Title 20 CCR 2501 and following (and amendments).

- 5) **Proprietary Data** is such data as Contractor has identified in a satisfactory manner as being under Contractor's control prior to commencement of performance of this Agreement, and which Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Agreement is commenced. Proprietary Data also includes data of a proprietary nature produced during the course of this Agreement that is produced by Contractor or its subcontractors at their own expense.
- 6) A **Trade Secret** is any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented and which is generally known only to certain individuals with a commercial concern and are using it to fabricate, produce or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.
- 7) **Generated Data** is that data that the Contractor collects, collates, records, deduces, reads out or postulates for use in the performance of this Agreement. In addition, any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Agreement at Commission expense, together with complete documentation thereof, shall be treated as generated data.
- 8) **Deliverable Data** is that data which, under the terms of this Agreement, is required to be delivered to the Commission.

2. **AGREEMENT MANAGEMENT:**

- A. The Contractor Project Manager may not be replaced without Commission Contract Manager's prior written approval. Such approval shall not be unreasonably withheld. The Contractor Project Manager is responsible for the day to day project status, decisions and communications with the Commission Contract Manager.
- B. Commission may change the Contract Manager by notice given Contractor at any time signed by the Commission Contract Officer. The Commission Contract Manager is responsible for the day-to-day Agreement status, decisions and communications with the Contractor Project Manager. The Commission Contract Manager will review and approve all project deliverables, reports and invoices.
- C. The Contractor Project Manager may revise the schedule in Exhibit A with prior written approval by the Commission Contract Manager as long as these changes do not exceed the term of the Agreement. Copies of all approved schedule revisions shall be submitted to the Commission Contract Officer.

3. **STANDARD OF PERFORMANCE:**

Contractor shall be responsible in the performance of Contractor's/subcontractor's work under this Agreement for exercising the degree of skill and care required by customarily accepted good

professional practices and procedures used in scientific and engineering research fields. Any costs for failure to meet these standards, or otherwise defective services, which require reperformance, as directed by Commission Contract Manager or its designee, shall be borne in total by the Contractor/subcontractor and not the Commission. In the event the Contractor/subcontractor fails to perform in accordance with the above standard the following will apply. Nothing contained in this section is intended to limit any of the rights or remedies that the Commission may have under law.

- A. Contractor/subcontractor will reperform, at its own expense, any task that was not performed to the reasonable satisfaction of the Commission Contract Manager. Any work reperformed pursuant to this clause shall be completed within the time limitations originally set forth for the specific task involved. Contractor/subcontractor shall work any overtime required to meet the deadline for the task at no additional cost to the Commission.
- B. The Commission Contract Manager shall provide a new schedule for the reperformance of any task pursuant to this Clause in the event that reperformance of a task within the original time limitations is not feasible.
- C. If the Commission Contract Manager directs the Contractor not to reperform a task, the Commission Contract Manager and Contract Project Manager shall negotiate a reasonable settlement for satisfactory services rendered. No previous payment shall be considered a waiver of the Commission's right to reimbursement.
- D. The failure of a project to achieve the technical or economic goals stated in the Scope of Work is not a basis for the Commission to determine that the work is unacceptable, unless the work conducted by the Contractor/subcontractors is deemed by the Commission to have failed the foregoing standard of performance.
- E. In the event that Contractor/subcontractor fail to perform in accordance with the foregoing standard of performance, the Commission Contract Manager and the Contractor Project Manager shall seek to negotiate in good faith an equitable resolution satisfactory to both parties. If such a resolution cannot be reached, the parties shall work through the Commission's dispute resolution process described in the Disputes clause herein.

4. PERSONNEL, SUBCONTRACTORS, and DVBEs

A. Key Personnel

Contractor's key personnel may not be substituted without the Commission Contract Manager's prior written approval. Such approval shall not be unreasonably withheld. Contractor may substitute all other personnel, with reasonable advance notification made to the Commission Contract Manager.

B. Key Subcontractors

Contractor's key subcontractors may not be substituted without the Commission Contract Manager's prior written approval. Such approval shall not be unreasonably withheld.

C. Non-Key Subcontractors

Replacement or substitution of all non-key subcontractors is permitted with reasonable advance written notification to the Commission Contract Manager and shall be subject to the provisions of this Clause.

D. Agreements with Subcontractors

If subcontractors are needed to perform any portion of this Agreement, the following criteria must be met and Contractor shall manage the performance of the subcontractors.

- 1) Nothing contained in this Agreement or otherwise, shall create any contractual relationship between the State and any subcontractors, and no subcontract shall relieve the Contractor of his responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors or persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.
- 2) Contractor shall be responsible for establishing and maintaining contractual agreements with, and the reimbursement of each of, the subcontractors for work performed in accordance with the terms of this Agreement. Contractor shall be responsible for scheduling and assigning subcontractors to specific tasks in the manner described in this Agreement, coordinating subcontractor accessibility to Commission staff, and submitting completed products to the Commission Contract Manager. Contractor shall provide Commission with copies of all contractual agreements with key subcontractors promptly upon final execution thereof.
- 3) PIER Contractors who are subcontracting with a private or public university may use the terms and conditions negotiated by the Commission with universities for their subcontracts. PIER Contractors who are subcontracting with DOE may use the terms and conditions negotiated by the Commission with DOE for their subcontracts.
- 4) Flowdown provisions that shall be included in subcontracts are listed below.

Confidentiality	Audit
Purchase of Equipment	Recordkeeping, Cost Accounting & Auditing
Standard of Performance	Rights of Parties Regarding Intellectual Property
Stop Work	No Further Assignments
Termination	Discrimination
Intellectual Property Items Developed prior to this Agreement	

- 5) Each subcontract shall contain provisions similar to those stated in "Rights of Parties Regarding Intellectual Property", subparagraph stating: "Limitations on Contractor Disclosure of Contract Data, Information, Reports and Records,"

related to the confidentiality of Commission data and its nondisclosure by Contractor.

- 6) All subcontracts entered into pursuant to this contract shall be subject to examination and audit by the Bureau of State Audits for a period of three years after final payment under the contract.
- 7) Each subcontract to which the Commission has consented shall contain a provision that further assignments shall not be made to any third or subsequent tier subcontractor without additional advance written consent of Commission.

E. Additions, Removal, or Substitutions of Subcontractors

Any subcontractor change shall be subject to the following conditions:

- 1) Contractor shall provide the Commission with a copy of its contracting policies and procedures for selecting subcontractors. The Commission Contract Officer shall evaluate the Contractor's process to determine if it is in substantial accord with the State's process. The Commission Contract Officer will provide a written determination to the Contractor. The Commission Contract Officer will retain this set of contracting policies and procedures until the final audit of project records.
- 2) If Contractor's process is acceptable, Contractor may use its process to solicit and select subcontractors. If, however, Contractor's process does not substantially meet the State's requirements, Contractor shall solicit a minimum of three bids or provide justification, in advance, to the Contract Officer, as to why a competitive process is not appropriate.
- 3) Thirty days prior to using new policies and procedures, the Contractor shall notify the Commission Contract Officer and provide a detailed, written description of the changes. The Commission Contract Officer will provide a written determination to the Contractor stating whether the revised changes are still in substantial accord with the State's process.

F. Disabled Veteran Business Enterprise (DVBE) Changes

The Contractor shall use the DVBE companies identified in its proposal or in any certifications identifying DVBE to be used in this Agreement. Contractor's failure to adhere to the DVBE participation may be cause for termination. In the event a replacement of a DVBE is necessary, the Contractor shall request written approval, in advance, from the Commission Contract Manager and the Commission Contract Officer. The procedure for replacing any DVBE is:

- 1) Contractor shall inform Commission Contract Manager and Contract Officer in writing of the reason for the DVBE replacement.
- 2) Contractor shall attempt to replace the DVBE with a new DVBE providing the same services or identify other services in the Agreement a new DVBE could provide. Contractor shall complete revised DVBE certification forms (provided by the Contract Officer) identifying the new DVBE. If replacement is not a

DVBE, Contractor shall complete steps in compliance with good faith efforts and submit appropriate DVBE documentation to the Commission Contract Officer.

5. **PERFORMANCE EVALUATION:**

Consistent with Public Contract Code Sections 10367 and 10369, the Commission shall, upon completion of this Agreement, prepare a performance evaluation of the Contractor. Upon filing an unsatisfactory evaluation with the Department of General Services, Office of Legal Services (DGS) the Commission shall notify and send a copy of the evaluation to the Contractor within 15 days. The Contractor shall have 30 days to prepare and send statements to the Commission and the DGS defending his or her performance. The Contractor's statement shall be filed with the evaluation in the Commission's Contract file and with DGS for a period of 36 months and shall not be a public record.

6. **REPORTS:**

A. Delivery of Reports

- 1) All **public** reports and deliverables shall be delivered to the Commission Accounting Office address listed on Exhibit F.
- 2) All **confidential** reports and deliverables shall be sealed and marked "Confidential Deliverable" and delivered to the Contracts Officer listed on Exhibit F.

B. Legal and Copyright Notices

All documents prepared for this Agreement that will be released to the public including reports, deliverables, articles submitted for publication, and all reprints, shall include the following:

LEGAL NOTICE

This report was prepared as a result of work sponsored by the California Energy Commission (Energy Commission, Commission). It does not necessarily represent the views of the Commission, its employees, or the State of California. The Commission, the State of California, its employees, Contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this report; nor does any party represent that the use of this information will not infringe upon privately owned rights. This report has not been approved or disapproved by the Commission nor has the Commission passed upon the accuracy or adequacy of the information in this report.

COPYRIGHT NOTICE

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[THE COPYRIGHT HOLDER'S NAME]
ALL RIGHTS RESERVED.

C. Limitations on Contractor Disclosure of Contract Data, Information, Reports and Records

- 1) Contractor will not disclose the contents of any preliminary or draft deliverable or report without first providing a copy of the disclosure document for review and comment to the Commission Contract Manager. The Contractor shall consider the comments of the Commission Contract Manager and use professional judgment in revising the disclosure document accordingly.
- 2) After any document submitted has become a part of the public records of the State, Contractor may, if it wishes to do so at its own expense, publish or utilize the same, and shall include the Legal and Copyright Notices required above.
- 3) In the event any public statement is made by the Commission as to the role of Contractor or the content of any deliverable or report, the Contractor may, if it believes such statement to be incorrect, state publicly what it believes is correct.
- 4) No record that is provided by the Commission to Contractor for Contractor's use in executing this contract and which has been designated as confidential, or is the subject of a pending Application for Confidential Designation, except as provided in Title 20, CCR Sections 2506 and 2507, shall be disclosed, unless disclosure is ordered by a court of competent jurisdiction (Title 20 CCR Section 2501, et seq.). At the election of the Commission Contract Manager, the Contractor, its employees and any subcontractor shall execute a "Confidentiality Agreement," supplied by the Commission Contract Manager.
- 5) Contractor acknowledges that each of its officers, employees, and subcontractors who are involved in the performance of this Agreement will be informed about these restrictions and be directed to abide by the above terms.

7. **PUBLIC HEARINGS:** If public hearings on the scope of work are held during the period of the Agreement, Contractor will make available to testify the personnel assigned to this Agreement. The Commission will reimburse Contractor for compensation and travel of the personnel at the Agreement rates for the testimony which the Commission requests.

8. **DISPUTES:** In the event of an Agreement dispute or grievance between the Contractor Project Manager and Commission Contract Manager, the parties shall use any or all of the following procedures. Contractor shall continue with its responsibilities under this Agreement during any dispute.

A. Commission Dispute Resolution

If the Commission Contract Manager and the Contractor Project Manager cannot resolve an Agreement dispute or grievance, the Contractor Project Manager or the Commission Contract Manager, or both shall each prepare a package in writing stating the issues in

dispute, the legal authority or other basis for their respective positions and the remedy sought. The packages must be submitted to the Commission Dispute Resolution Committee. The Commission Contract Manager will notify the Contractor Project Manager of the current Committee members. The Committee shall make a determination on the problem within ten (10) working days after receipt of the package.

If Contractor or Commission Contract Manager disagrees with the Committee's decision, they may appeal to the Commission at a regularly scheduled business meeting. The Committee will provide the Contractor with the current procedures for placing the appeal on a Commission Business Meeting Agenda.

B. Binding Arbitration

If the Commission's Dispute Resolution procedure identified in Clause A. above fails to resolve an Agreement dispute or grievance to the satisfaction of the Contractor or Commission Contract Manager, the parties have the option to mutually agree to have the dispute or grievance resolved through binding arbitration. The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. One arbitrator who is an expert in the particular field of the dispute or grievance shall resolve the dispute or grievance. The arbitrator shall be selected in accordance with the aforementioned commercial arbitration rules. The decision rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof. The demand for arbitration shall be made no later than six months after the date of the Agreement's termination, irrespective of when the dispute or grievance arose, and irrespective of the applicable statute of limitations for a suit based on the dispute or grievance. If the parties do not mutually agree to arbitration, the sole forum to resolve the dispute is State court.

The cost of arbitration shall be borne by the parties as follows:

- 1) The AAA's administrative fees shall be borne equally by the parties;
- 2) The expense of a stenographer shall be borne by the party requesting a stenographic record;
- 3) Witness expenses for either side shall be paid by the party producing the witness;
- 4) Each party shall bear the cost of its own travel expenses;
- 5) All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of his or her award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of Agreement funds. Both parties must agree, in writing, to utilize Agreement funds to pay for arbitration costs.

9. TERMINATION:

A. Purpose

The parties agree that because the Commission is a state entity and contracts on behalf of all Californian ratepayers, it is necessary for the Commission to be able to terminate, at once, upon the default of Contractors and to proceed with the work required under the Agreement in any manner the Commission deems proper. Contractor specifically

acknowledges that the termination of the Agreement by the Commission under the terms set forth below is an essential term of the Agreement, without which the Commission would not enter into the Agreement. Contractor further agrees that upon any of the events triggering the termination of the Agreement by the Commission, the Commission has the right to terminate the Agreement, and it would constitute bad faith of the Contractor to interfere with the immediate termination of the Agreement by the Commission.

B. Breach

The Commission shall provide the Contractor written notice of intent to terminate due to Contractor's breach. Contractor will have 15 calendar days to fully perform or cure the breach. In the event Contractor does not cure the breach within 15 days, the Commission may, without prejudice to any of its other remedies, terminate this Agreement upon five calendar days written notice to Contractor. In such event, Commission shall pay Contractor only the reasonable value of the satisfactorily performed services rendered by Contractor, before the notice of termination as may be agreed upon by the parties or determined by a court of law, but not in excess of the Agreement maximum payable.

C. For Cause

The Commission may, for cause, and at its option, terminate this Agreement upon giving 30 calendar days, advance written notice to Contractor. In such event, Contractor agrees to use all reasonable efforts to mitigate its expenses and obligations. Commission will pay Contractor for services rendered and expenses incurred within 30 days after notice of termination which could not by reasonable efforts of Contractor have been avoided, but not in excess of Agreement maximum payable. Contractor agrees to relinquish possession of equipment purchased for this project with Commission funds to Commission, or Contractor may, with approval of Commission, purchase said equipment as provided by the terms of this Agreement.

The term "for cause" includes, but is not limited to, the following reasons:

- Partial or complete loss of match funds;
- Reorganization to a business entity unsatisfactory to the Commission;
- Retention or hiring of subcontractors, or replacement or addition of Key Personnel that fail to perform to the standards and requirements of this Agreement;
- Failure to utilize the DVBE subcontractors/vendors in Contractor's proposal;
- Contractor is not able to pay its debts as they become due and/or Contractor is in default of an obligation that impacts Contractor's ability to perform under this Agreement;
- Significant change in State or Energy Commission policy such that the work or product being funded would not be supported by the Commission; or
- In the case of a technical support Agreement, changes in Commission staff such that Commission staff can do the work or product being funded.

10. WAIVER:

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of the Commission to enforce at any time any of the provisions of this Agreement, or to require at

any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Agreement or any part of it or the right of the Commission to thereafter enforce each and every such provision.

11. **CAPTIONS:**

The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference and do not define, limit, or extend the scope or intent of the clauses.

12. **PRIOR DEALINGS, CUSTOM OR TRADE USAGE:**

In no event shall any prior course of dealing, custom or trade usage modify, alter, or supplement any of these terms.

13. **NOTICE:**

Notice to either party may be given using the following delivery methods, certified mail, Federal Express, United Parcel Service, or personal delivery, providing evidence of receipt, to the respective parties identified on page one of this Agreement. Delivery by fax or e-mail is not considered notice for the purpose of this Agreement.

Notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery. In which case, the effective date shall be postponed 24 hours, or whenever the next business day occurs.

14. **STOP WORK:**

The Commission Contracts Officer may, at any time, by written notice to Contractor, require Contractor to stop all or any part of the work tasks in this Agreement. Stop Work Orders may be issued for reasons such as a project exceeding budget, standard of performance, out of scope work, delay in project schedule, misrepresentations and the like.

- A. Compliance. Upon receipt of such stop work order, Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
- B. Equitable Adjustment. An equitable adjustment shall be made by Commission based upon a written request by Contractor for an equitable adjustment. Such adjustment request must be made by Contractor within 30 days from the date of receipt of the stop work notice.
- C. Terminating a Stop Work Order. Contractor shall resume the stopped work only upon receipt of written instructions from the Commission Contract Officer terminating the stop work order.

15. **RIGHTS OF PARTIES REGARDING INTELLECTUAL PROPERTY**

A. Commission's Rights in Deliverables

Deliverables and reports specified for delivery to the Commission under this Agreement shall become the property of the Commission. The Commission may use, publish, and reproduce the deliverables and reports subject to the provisions of subparagraph C.

B. Rights in Technical, Generated, and Deliverable Data

1) Contractor's Rights

All Data (i.e., Technical, Generated and Deliverable Data) produced under this Agreement shall be the property of the Contractor, limited by the license retained by the Commission in 2) below, and the rights the Commission has in deliverables specified above in A).

2) Commission's Rights

Contractor shall provide the Commission Contract Manager and any designated reviewer(s) with a copy of all Technical, Generated and Deliverable Data produced under the Agreement, when requested. Contractor is not required to copy and submit Data the Commission Contract Manager has identified as being unusable to the Commission and the PIER program. For instance, some Data may not warrant routine copying and shipping because the raw data is too disaggregated or voluminous for practical application. Retention of such data at the Contractor's facility for inspection, review and possible copying by the Contract Manager is expected to be a more efficient use of Commission staff and the Contractor's time and efforts.

Upon request by Contract Manager, Contractor shall provide the Contract Manager and any designated reviewer(s) access to review Technical and Generated Data produced in the course of this Agreement that is not requested to be delivered to the Commission.

For all Data (Technical, Generated and Deliverable) produced under this Agreement, the Commission retains a no-cost, non-exclusive, non-transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, produce and to authorize others to produce, translate, publish and use the Data, subject to the provisions of subparagraph C.

C. Limitations on Commission Disclosure of Information Contractor Considers Confidential

- 1) Data provided to the Commission by Contractor, which Data the Commission has not already designated as Confidential Information and which Contractor seeks to have designated as confidential, or is the subject of a pending application for confidential designation, shall not be disclosed by the Commission except as provided in Title 20 CCR Sections 2506 and 2507 (and amendments), unless disclosure is ordered by a court of competent jurisdiction.

- 2) It is the Commission's intent to use and release project results such as deliverables and Data in a manner calculated to further PIER while protecting proprietary or patentable interests of the parties. Therefore, the Commission agrees not to disclose information that Contractor considers confidential, without first providing a copy of the disclosure document for review and comment by Contractor. Contractor shall have no less than 10 working days for review and comment and, if appropriate, to make an application for confidential designation pursuant to Title 20 CCR Sections 2505 (and amendments) on some or all of the information. The Commission shall consider the comments of Contractor and use professional judgment in revising the disclosure document accordingly.

D. Exclusive Remedy

In the event the Commission intends to publish or has disclosed Data the Contractor considers confidential, the Contractor's exclusive remedy is a civil court action for injunctive relief. Such court action shall be filed in Sacramento County, Sacramento, California.

E. Waiver of Consequential Damages

IN NO EVENT WILL THE ENERGY COMMISSION BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT TORT, OR ANY OTHER LEGAL THEORY FOR THE DISCLOSURE OF CONFIDENTIAL INFORMATION OR INFORMATION CONTRACTOR CONSIDERS CONFIDENTIAL, EVEN IF THE ENERGY COMMISSION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. DAMAGES THAT THE ENERGY COMMISSION WILL NOT BE RESPONSIBLE FOR INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF PROFIT; LOSS OF SAVINGS OR REVENUE; LOSS OF GOODWILL; LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT; COST OF CAPITAL; COST OF ANY SUBSTITUTE EQUIPMENT, FACILITIES, OR SERVICES; DOWNTIME; THE CLAIMS OF THIRD PARTIES INCLUDING CUSTOMERS; AND INJURY TO PROPERTY.

F. Limitations on Contractor Disclosure of Confidential Information

- 1) No record that is provided by the Commission to Contractor for Contractor's use in executing this Agreement and which has been designated as Confidential Information, or is the subject of a pending application for confidential designation, except as provided in Title 20, CCR Sections 2505 and following (and amendments), shall be disclosed, unless disclosure is ordered by a court of competent jurisdiction. At the election of the Commission Contract Manager, the Contractor, its employees and any subcontractor shall execute a "Confidentiality Agreement," supplied by the Commission Contract Manager.
- 2) Contractor acknowledges that each of its officers, employees, and subcontractors who are involved in the performance of this Agreement will be informed about these restrictions and be directed to abide by the above terms.

G. Proprietary Data

Proprietary Data owned by the Contractor shall remain with the Contractor throughout the term of this Agreement and thereafter. The extent of Commission access to the same and the testimony available regarding the same shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable or to establish a baseline for repayment purposes. Upon request by Contract Manager, Contractor shall provide the Contract Manager and any designated reviewer(s) access to review Contractor's Proprietary Data produced in the course of this Agreement that is not requested to be delivered to the Commission. The Commission shall not disclose any Contractor Proprietary Data accessed or reviewed to any third party.

H. Preservation of Data

Any Data that is reserved to the Contractor by the express terms hereof, and Proprietary Data and Trade Secrets that have been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, shall be preserved by the Contractor at the Contractor's own expense for a minimum of three years after final payment, unless a longer period of record retention is stipulated.

I. Destruction of Data

Before the expiration of three years and before changing the form of or destroying any Data (including Technical, Generated, Deliverable and Proprietary) or Trade Secrets, the Contractor shall notify Commission of any such contemplated action and Commission may, within thirty (30) days after said notification, determine whether it desires said Data to be further preserved. If Commission so elects, the expense of further preserving said Data shall be paid for by the Commission. Contractor agrees that Commission may at its own expense, have reasonable access to said Data throughout the time during which said Data is preserved. Contractor agrees to use its best efforts to identify competent witnesses to testify in any court of law regarding said Data or, at Commission's expense, to furnish such competent witnesses.

J. Patent Rights

Patent rights for Subject Inventions will be the property of Contractor, subject to the Commission retaining a no-cost, nonexclusive, nontransferable, irrevocable, royalty-free, worldwide perpetual license to use or have practiced for or on behalf of the State of California the Subject Invention(s) for governmental purposes. Contractor must obtain agreements to effectuate this clause with all persons or entities, except for the U.S. Department of Energy (DOE), obtaining ownership interest in the patented Subject Invention(s). Previously documented (whether patented or unpatented under the patent laws of the United States of America or any foreign country) inventions are exempt from this provision.

K. March-In Rights

The Contractor shall forfeit and assign to the Commission, at the Commission's request, all rights on a Subject Invention if either: 1) Contractor fails to apply for a patent on Subject Inventions(s) developed under this Agreement within six months of conceiving or first

actually reducing to practice the technology or 2) Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the Subject Invention. In this event, the Contractor agrees to relinquish all rights, subject to DOE reserved rights, on the Subject Invention to the Commission. The Commission will have the unfettered right to use and/or dispose of the rights in whatever manner it deems most suitable to help transfer the technology into the market place, including but not limited to, seeking patent protection, or licensing the Subject Invention.

L. Commission's Rights to Invention.

Contractor and all persons and/or entities obtaining an ownership interest in Subject Invention(s) shall include within the specification of any United States patent application, and any patent issuing thereon covering a Subject Invention, the following statement:

"THIS INVENTION WAS MADE WITH STATE OF CALIFORNIA SUPPORT UNDER CALIFORNIA ENERGY COMMISSION AGREEMENT NUMBER «**CONTRACT NUMBER**». THE ENERGY COMMISSION HAS CERTAIN RIGHTS TO THIS INVENTION."

M. Commission's Interest in Inventions.

Upon the perfecting of a patent application on any Subject Invention, Contractor will fill out and sign a Uniform Commercial Code (UCC.1) Financing Statement and submit it to the Commission Contract Officer for complete processing. The Commission Contract Officer will review the UCC.1 for complete information and file the completed UCC.1 with the Secretary of State's Office.

N. Copyrights

- 1) Copyrightable Work first produced under this Agreement shall be owned by the Contractor, limited by the license granted to the Commission in 2) below.
- 2) Contractor agrees to grant the Commission a royalty-free, no-cost, nonexclusive, irrevocable, nontransferable, worldwide, perpetual license to produce, translate, publish, use and dispose of, and to authorize others to produce, translate, publish, use and dispose of all Copyrightable Work first produced or composed in the performance of this Agreement.
- 3) Contractor will apply copyright notices to all documents prepared for this Agreement that will be released to the public including reports, deliverables, articles submitted for publication, and all reprints, using the following form or such other form as may be reasonably specified by Commission.

“©[YEAR OF FIRST PUBLICATION OF DELIVERABLE],
[THE COPYRIGHT HOLDER'S NAME].
ALL RIGHTS RESERVED.”

4) Software

In the event software is developed that is not a deliverable under the Agreement, Contractor shall have the right to copyright and/or patent such software and grants the Commission a royalty-free, no-cost, non-exclusive, irrevocable, non-

transferable, worldwide, perpetual license to produce and use the software, its derivatives and upgrades for governmental purposes.

O. Intellectual Property Indemnity

Contractor warrants that Contractor will not, in its supplying of the work under this Agreement's work statement, knowingly infringe or misappropriate any intellectual property right of a third party, and that it will conduct a reasonable investigation of the intellectual property rights of third parties to avoid such infringement. Contractor will defend and indemnify Commission from and against any claim, lawsuit or other proceeding, loss, cost, liability or expense (including court costs and reasonable fees of attorneys and other professionals) to the extent arising out of: (i) any third party claim that a deliverable infringes any patent, copyright, trade secret or other intellectual property right of any third party, or (ii) any third party claim arising out of the negligent or other tortious act(s) or omission(s) by the Contractor, its employees, subcontractors or agents, in connection with or related to the deliverables or the Contractor's performance thereof under this Agreement.

16. **PURCHASE OF EQUIPMENT**

- A. Equipment identified in this Agreement is approved for purchase.
- B. Equipment not identified in this Agreement shall be subject to prior written approval from the Commission Contract Manager.
- C. All equipment purchased with Commission funds shall be made subject to the following terms and conditions:
 - 1) The Commission Contract Officer will complete and sign a Uniform Commercial Code (UCC.1) Financing Statement and submit it to the Contractor for signature. The Commission Contract Officer will file the signed UCC.1 with the Secretary of State's Office. Invoices for equipment purchases associated with a UCC.1 will not be processed until the UCC.1 has been filed with the Secretary of State's Office.
 - 2) Title to all non-expendable equipment purchased in part or in whole with Commission funds shall remain with the Commission.
 - 3) Contractor shall assume all risk for maintenance, repair, destruction and damage to equipment while in the possession or subject to the control of Contractor. Contractor is not expected to repair or replace equipment that is intended to undergo significant modification or testing to the point of damage/destruction as part of the work described in Exhibit A, Scope of Work.
- D. Upon termination or completion of this Agreement, Commission may:
 - 1) if requested by the Contractor, authorize the continued use of such equipment to further Public Interest Energy Research efforts,
 - 2) by mutual agreement with the Contractor, allow the Contractor to purchase such equipment for an amount not to exceed the residual value of the equipment as of the date of termination or completion of this Agreement, or

- 3) request that such equipment be delivered to the Commission with any costs incurred for such return to be borne by the Commission.

17. **BUSINESS ACTIVITY REPORTING**

- A. Contractor shall promptly notify the Commission Contract Manager of the occurrence of each of the following:
 - 1) A change of address.
 - 2) A change in the business name or ownership.
 - 3) The existence of any litigation or other legal proceeding affecting this Agreement.
 - 4) The occurrence of any casualty or other loss to project personnel, equipment or third parties.
 - 5) Contractor's receipt of notice of any claim or potential claim against Contractor for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the Commission's rights.
- B. Contractor shall not change or reorganize the type of business entity under which it does business except upon prior written notification to the Commission. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. In the event the Commission is not satisfied that the new entity can perform as the original Contractor, the Commission may terminate this Agreement as provided in the Termination clause.

18. **REVIEW AND NOTICE OF CONFLICTING TERMS**

Contractor warrants and attests that it has conducted a detailed review of the terms and conditions of its existing related third party agreements and has identified all known or reasonably foreseeable conflicts with this Agreement's terms and conditions and has disclosed the conflicts in writing to the Commission prior to executing this Agreement. In the event further conflicts are identified, Contractor and Commission agree that these conflicts shall be addressed using the procedure described in the Disputes clause. Nothing in this Agreement is intended to nullify or obviate any prior third party agreements executed by Contractor. However, the Commission is free to terminate this Agreement if the conflict impairs or diminishes the value of this Agreement.

19. **SITE ACCESS**

The Energy Commission staff or its representatives shall have reasonable access to the construction site or research laboratory, and all records related to this Agreement. Contractor shall ensure the Commission has the same site access rights for all subcontractors.

20. **ASSURANCES**

The Commission reserves the right to seek further written assurances from the Contractor and its team that the work of the project under the Agreement will be performed consistent with the terms of the Agreement.

21. **SURVIVAL**

It is understood and agreed that certain Agreement provisions shall survive the completion or termination date of this Agreement for any reason. The Agreement provisions include, but are not limited to:

- Recordkeeping, Cost Accounting and Auditing
- Indemnification
- Disputes
- Termination
- Rights of Parties Regarding Intellectual Property
- Purchase of Equipment
- Business Activity Reporting
- Site Access
- Royalty Payments to Commission

22. **INTERPRETATION OF TERMS**: Any inconsistency between the terms of any exhibits shall be resolved in favor of Exhibit D, Special Terms and Conditions, and Exhibit E, Additional Provisions.

EXHIBIT E
Additional Provisions

**NOTE ATTACHMENT 13 EXHIBIT E (LIST) WILL BE INSERTED
AT THE BACK OF THIS EXHIBIT**

The following clauses may or may not be included in agreement, Contract Officer to decide when developing this Exhibit if any of the following clauses apply to the specific scope of work or if an additional clause or term is needed.

1. CONFIDENTIALITY:

A. Designation of Confidentiality

Confidentiality information is designated in the Attachment to this Exhibit.

The Commission Executive Director makes the determination regarding a designation of confidentiality pursuant to 20 CCR 2505. In the event there is a disagreement regarding the confidential designation, Contractor may appeal the Executive Director's determination to the full Commission.

B. Public and Confidential Deliverables

Only those items specifically listed below or in a subsequent determination of confidentiality qualify as confidential deliverables. All deliverables including, but not limited to, progress reports, task deliverables and the Final Report shall not contain confidential information except when the Commission Contract Manager and the Contractor deem it necessary to include confidential information in a deliverable. In such event, the Contractor shall prepare the deliverable in two separate volumes, one for public distribution and one to be maintained in the Commission's confidential records.

C. Future Confidential Information

The Contractor and the Commission agree that during this Agreement, it is possible that the Contractor may develop additional data or information that the Contractor considers to be protectable as confidential information. The Commission Contract Manager shall provide a copy of the Commission Application for Confidential Designation to the Contractor Project Manager. Contractor must list all items and information along with justification for confidentiality and submit the application to the Commission Contract Manager. The Commission Executive Director makes the final determination of confidentiality. Such subsequent determinations will be added to this Agreement.

D. Identifying and Submitting Confidential Information

All confidential information submitted by the Contractor shall be marked "Confidential" on each document containing the confidential information and delivered in a sealed package to the Commission Contract Officer identified in Exhibit F. The Commission Contract Officer will notify the Commission Contract Manager that the confidential information has been received and is in the Contracts Office for review. The confidential information will only be available to those persons authorized by the Executive Director.

2. INTELLECTUAL PROPERTY ITEMS DEVELOPED PRIOR TO THIS AGREEMENT

- A. Intellectual Property information is designated in the Attachment to this Exhibit.
- B. The Commission makes no claim to intellectual property that existed prior to this Agreement and was developed without Commission funding.
- C. The Contractor gives notice that the items listed in the attachment have been developed without Commission funding and prior to the start of this Agreement. This list represents a brief description of the prior developed intellectual property. A detailed description of the intellectual property, as it exists on the effective date of this Agreement, may be necessary if Commission funds are used to further develop the listed intellectual property. This information will assist the parties to make an informed decision regarding intellectual property rights and possible repayment obligations.

3. ROYALTY PAYMENTS TO COMMISSION

In consideration of Commission providing funding to Contractor, Contractor agrees to pay Commission royalties on the terms and conditions hereinafter set forth.

- A. Contractor agrees to pay Commission a royalty of 1.5% (one and one-half percent) of the Sale Price on the Sale of each and every Project-Related Product and Rights that the Contractor receives.
- B. Contractor's obligation to make payments to Commission shall commence from the date Project Related Products or Rights are first Sold and shall extend for a period of 15 years thereafter. Payments are payable in annual installments and are due the first day of March in the calendar year immediately following the year during which Contractor receives Gross Revenues.
- C. Early Buyout. Contractor has the option of paying its royalty obligations to Commission without a pre-payment penalty, provided Contractor makes the payment within two years from the date at which royalties are first due to Commission, in the lump sum amount equal to two (2) times the amount of funds drawn down on the Agreement.
- D. Contractor agrees not to make any Sale, license, lease, gift or other transfer of any Project-Related Products and Rights with the intent of, or for the purpose of, depriving Commission of royalties hereunder. Generally, this means that Contractor will not make any Sale, license, lease or other transfer of Project-Related Products and Rights for consideration other than fair market value. Further, Contractor agrees that such activity constitutes breach of this Agreement and that Contractor agrees to repay within 60 days the amount due under subclause C above (Early Buyout).
- E. Contractor acknowledges that a late payment of royalties owed to the Commission will cause the Commission to incur costs not contemplated by the parties. If a royalty payment is not paid when due, Contractor agrees to pay the Commission a late fee equal to two percent (2%) of the payment due. Additionally, Contractor agrees that royalty payments not paid within fifteen (15) days of the due date shall thereupon become debt obligations of Contractor to the Commission, due upon demand and bearing interest at the maximum interest rate allowed by law.

- F. Contractor shall maintain separate accounts within its financial and other records for purposes of tracking components of Sales and royalties due to Commission under this Agreement.
- G. Payments to Commission are subject to audit as provided for under the Recordkeeping, Cost Accounting and Auditing clause.
- H. In the event of default hereunder, Commission shall be free to exercise all rights and remedies available to it herein, and under law and at equity. The Contractor's failure to pay when due, any amount due and payable shall cause default under this Agreement.

4. PROPOSAL INTERPRETATION: This Agreement shall be conducted in accordance with the terms and conditions of a Commission Request for Proposal, Invitation for Bid or Request for Qualifications number _____, titled, _____, Contractor's proposal dated _____ and this Agreement. The Contractor's proposal is not attached, but is expressly incorporated by reference into this Agreement. In the event of conflict or inconsistency between the terms of this Agreement and the Contractor's proposal, this Agreement shall be considered controlling.

5. CONFLICT OF INTEREST:

- A. Contractor agrees to continuously review new and upcoming projects in which members of the Contractor team may be involved for potential conflicts of interest. Contractor shall report its findings in its progress report.

C.O. Other provisions that apply to specific situations may be inserted here. Below are options for various types of contracts

The following applies only to the consulting services and architectural & engineering contracts

- B. Contractor shall submit a completed Fair Political Practices Commission Form 700, "Statement of Economic Interests" for each consultant directed by the Commission to file a statement.

The following applies only to consulting services contracts

- C. No person, firm, or subsidiary thereof who has been awarded a consulting services Agreement may submit a bid for, nor be awarded an Agreement for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services Agreement. This does not apply to any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services Agreement which amounts to no more than 10 percent of the total monetary value of the consulting services Agreement.

1) Reviewing, Evaluation & Assistance Activities

Contractor and each team member shall be disqualified from participating in the review, evaluation, or assistance of:

- a) Any project seeking assistance under the programs listed above for which Contractor has become a project developer or independent consultant in a situation not covered by clause D.1; or,
- b) Any project for which, within twelve (12) months prior to the start date of this Agreement or at any time during this Agreement, it has provided assistance under a separate Agreement to the project proponent that is seeking assistance for the same project under any of the above programs.

3) Subcontractors

Contractor shall require each of its subcontractors at any level who will be involved in the performance of this Agreement to agree to the above terms in a form to be approved by the Commission Contract Manager, and shall furnish the Commission with evidence thereof. The terms of this paragraph shall remain in effect for the duration of this Agreement.

6. SIGNIFICANT CHANGES

Significant changes in this Agreement must be approved by the Commission in the form of a formal amendment. A change is significant if the original Agreement is modified in the following instances: the scope of work is modified, the due dates extend the term or the budget or rates increases beyond that approved at the Commission Business Meeting.

EXHIBIT E
ATTACHMENT

Confidential Deliverables and Preexisting Intellectual Property Lists

PART I: CONFIDENTIAL DELIVERABLES

Pursuant to 20 California Code of Regulations section 2505(c)(2)(B), the Commission designates the following as confidential.

☐ **No Confidential Deliverables,**

OR

☐ **Confidential Deliverables:**

Description of Information to be Kept Confidential: <ul style="list-style-type: none">• Title of document/name of deliverable• Task Number• Portion of document to be kept confidential• General description of the Technology to be kept confidential.	Legal Basis for Confidential Designation: <ul style="list-style-type: none">• Trade Secret<ul style="list-style-type: none">--Technical--Business--Marketing--Economic/Financial• Patent application number	Term of Confidentiality

PART II: PREEXISTING INTELLECTUAL PROPERTY

Contractor has identified the following intellectual property as pre-existing the effective date of this Agreement and is required for performance of this Agreement but is not a deliverable.

☐ **No Pre-existing Intellectual Property**

OR

☐ **Pre-existing Intellectual Property (Please insert "none" in the types that do not apply):**

Patents Issued

Title	Patent Number	Inventors/ Assignee (Owner)	File Date	Issue/ Grant Date	Country	Description

Patent Applications

Title	File Date	Public Description (2-3 sentences)

Trade Secrets

Title	Public Description (2-3 sentences)

Copyrights

Title	Copyright Number	Owner	File Date	Issue/ Grant Date	County	Description

Trademarks

Title	Trademark Number	Owner	File Date	Issue/ Grant Date	Country	Description

Disclosure Memos

Title	Disclosure Date	Memo Number, if applicable	Public Description (2-3 sentences)

Invention Berkley (DOE National Labs Only)

Title	Number	Date

EXHIBIT F

CONTACT PERSONS

<p>Commission Contract Manager:</p> <p>NAME California Energy Commission 1516 Ninth Street, MS-?? Sacramento, CA 95814 Phone: (916) ??-??? Fax: (916) ??-??? e-mail: ???@energy.state.ca.us</p>	<p>Contractor Project Manager:</p> <p>(Name) (Contractor Name) Address</p> <p>Phone: Fax: e-mail:</p>
<p>Commission Contracts Officer:</p> <p>NAME California Energy Commission 1516 Ninth Street, MS - 18 Sacramento, CA 95814 Phone: (916) ??-??? Fax: (916) 654-4423 e-mail: ???@energy.state.ca.us</p> <p><i>Deliver confidential deliverables to this location <u>only</u>.</i></p>	<p>Contractor Contract Officer:</p> <p>(Name) (Contractor Name) Address</p> <p>Phone: Fax: e-mail:</p>
<p>Invoices, Progress Reports and Non-Confidential Deliverables to:</p> <p>Frank Taniguchi Accounting Office California Energy Commission 1516 Ninth Street, MS - 2 Sacramento, CA 95814 Phone: (916) 654-3906 Fax: (916) 653-1435 e-mail: ftaniguc@energy.state.ca.us</p>	<p>Contractor Accounting Invoicing Contact:</p> <p>(Name) (Contractor Name) Address</p> <p>Phone: Fax: e-mail:</p>
<p>Commission Legal Notices:</p> <p>Cheryl Raedel Manager, Contracts Office California Energy Commission 1516 Ninth Street, MS - 18 Sacramento, CA 95814 Phone: (916) 654-4392 Fax: (916) 654-4423 e-mail: craedel@energy.state.ca.us</p>	<p>Contractor Legal Person:</p> <p>(Name) (Contractor Name) Address</p> <p>Phone: Fax: e-mail:</p>